

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

SAMMIE SMITH §  
v. § CIVIL ACTION NO. 5:05cv20  
DR. JERRY LEISURE, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Sammie Smith, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Titus County Jail. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On May 19, 2005, the Defendants filed a motion to dismiss for failure to state a claim and to dismiss for failure to properly plead under the Federal Rules of Civil Procedure. The Magistrate Judge converted this motion into a motion for more definite statement under Rule 12(e), Fed. R. Civ. P. This motion was then granted and Smith was given 30 days to file a pleading containing a short and plain statement of his claim. The Magistrate Judge's order provided Smith with five points to assist him in doing so.

Smith received a copy of this order on July 18, 2005, but has never responded. On August 24, 2005, the Defendants filed a supplemental motion to dismiss.

On October 20, 2005, the Magistrate Judge issued a Report recommending that the Defendants' motion be granted, except that the Magistrate Judge recommended dismissal without prejudice rather than dismissal with prejudice as the Defendants had sought. *See McNeal v. Papasan*, 842 F.2d 787, 790 (5th Cir. 1988) (noting that dismissal with prejudice for failure to prosecute is an

“extreme sanction,” and that lesser sanctions should be considered first). Copies of this Report were sent to the parties, but no objections were received; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this lawsuit and the Report of the Magistrate Judge and has determined that this Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 24th day of January, 2006.

  
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T. JOHN WARD  
UNITED STATES DISTRICT JUDGE